

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0176P

**Withholding Tax and Sales Tax
1995, 1996, 1997 Penalty**

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ISSUE(S)

I. **Tax Administration** – Penalty and Interest

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2; IC 6-8.1-10-1; IC 6-8.1-5-1

Taxpayer protests the penalty and interest assessed.

STATEMENT OF FACTS

On March 14, 1998, the taxpayer submitted a written protest to the Collection Division. On April 23, 1998, the Taxpayer Services Division informed the taxpayer by letter that the file is being forwarded to the Appeals Division for resolution.

I. **Tax Administration** – Penalty and interest

DISCUSSION

At issue is whether the taxpayer is allowed a refund of penalties and interest for 1995, 1996, and 1997, and whether the department will cancel existing liabilities.

The department makes its decision based upon a written letter of protest dated March 14, 1998.

The letter asks that the department refund all penalties and interest charged since 1995 as well as waive all outstanding liabilities.

On October 15, 1997 the taxpayer asked its local police department to investigate an internal theft. The investigation is pending as no official charges have been filed at March 14, 1998. Taxpayer seeks relief, as it was unaware of the penalties and interest assessed as a result of the conduct of the former

controller. Taxpayer further states that it has always been the company policy to file all returns on a timely basis but it was unaware of the embezzlement and altering of the company records until October 1997.

The department reviewed the taxpayer's account and found that late payments existed since at least October 1990 for withholding and sales taxes, some of which were in the warrant stages. Nearly all liabilities have been paid with the exception of ten liabilities in 1996 and 1997. Six of those liabilities are in the warrant stage.

IC 6-8.1-5-1(a) allows a person sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest. All liabilities at time of protest (with the exception of three) were beyond the sixty-day protest period.

The department determines that the penalties and interest are appropriate as the taxpayer has had consistent late payments since at least 1990 with some liabilities reaching the warrant stage. In addition, IC 6-8.1-10-1(e) does not allow the waiver of interest. The negligence penalty applies under IC 6-8.1-10-2. The department also upholds the failure to file returns penalty under IC 6-8.1-10-3, which is twenty percent.

The department finds no reasonable cause exists, as internal controls were not in place since at least 1990.

FINDING

Taxpayer's protest is denied.